

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM	DOCKET NO. INU-01-1
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**ORDER INITIATING FORMAL NOTICE AND COMMENT PROCEEDING AND
REQUIRING NOTICE TO PERSONS IDENTIFIED AS COMPETITORS**

(Issued September 18, 2001)

On August 9, 2001, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a petition for determination of effective competition and deregulation pursuant to Iowa Code § 476.1D (2001). Iowa Telecom asks the Utilities Board (Board) to determine that its existing retail local exchange service in the exchanges of Armstrong, Bennett, Coon Rapids, Delmar, Forest City, Lowden, Manning, and Oxford Junction are subject to effective competition and should be deregulated. If the Board grants that request and deregulates Iowa Telecom's retail local exchange services in the identified exchanges, Iowa Telecom requests a determination by the Board that a deregulation accounting plan is not required of Iowa Telecom because its rates are presently regulated pursuant to a price regulation plan under Iowa Code § 476.97.

Iowa Telecom filed a correction to its petition on August 17, 2001, and an amendment to its petition on September 12, 2001. The amendment added the

Stanwood exchange to the list of exchanges claimed to be subject to effective competition.

In support of its petition, Iowa Telecom states that in each of the exchanges a competitive local exchange carrier (CLEC) has applied for and received a certificate of public convenience and necessity to permit the CLEC to offer competitive telecommunications services in the identified exchange. Iowa Telecom alleges that these CLECs have acquired a substantial percentage of the local exchange service provided in each exchange. (Iowa Telecom included alleged market share data as a part of Exhibit B to its filing, but Iowa Telecom requested confidential treatment for that exhibit, so the Board will not use specific numbers from the exhibit in this order.)

On September 10, 2001, responses to Iowa Telecom's petition were filed by several interested persons, raising various issues regarding the petition. Independent Networks, L.C., Farmers' and Business Men's Telephone Company, Forest City Telecom, Inc., and Lost Nation-Elwood Telephone Group (the Respondents) suggested that if the Board docket the petition, the Board should require that Iowa Telecom give notice to all certified land-line telephone providers, interexchange carriers, and other interested parties. The Respondents also ask that the Board extend the deadlines in 199 IAC ch. 5 to allow full consideration of the issues. At the same time, the Respondents challenge the Board's jurisdiction to grant the relief sought, arguing the Board cannot deregulate retail and access services on a geographically limited basis. Finally, the Respondents allege a number

of factual issues that they believe require a full investigation and hearing if the Board is to take any action on the petition.

The Rural Iowa Independent Telephone Association (RIITA) filed a response noting that paragraph 4 of Iowa Telecom's petition includes access services among the local exchange services to be deregulated, but the petition is otherwise silent regarding Iowa Telecom's plans for access pricing. RIITA expresses concern about the lack of any specific proposal regarding access charges and asks that RIITA be permitted to participate if the Board docket the petition.

The Iowa Association of Municipal Utilities (IAMU) filed a response arguing that it is Iowa Telecom's burden to prove the Board has jurisdiction to deregulate telecommunications services on an exchange-area basis. IAMU also argues the petition raises the potential of predatory pricing by Iowa Telecom, meaning a hearing should be scheduled to consider what protections remain available under Iowa Code § 476.100 and the accounting plan to prevent this problem. IAMU therefore asks that the Board either deny the petition or docket the matter for formal consideration.

Coon Rapids Municipal Communications Utility and Manning Municipal Communications and Television System Utility (Municipal Utilities) join in the jurisdictional issues raised by IAMU and express similar concerns regarding the possibility of predatory pricing.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) denies that market forces in the identified exchanges are sufficient to

assure just and reasonable rates for local exchange services and are therefore subject to effective competition. Consumer Advocate argues the markets are, at best, duopolies, and the effectiveness of competition in a duopoly presents questions of fact that the Board must decide. Consumer Advocate also points out that six of the eight alleged competitors either are, or are related to, indirect, partial owners of Iowa Telecom, through their ownership of interests in Iowa Network Services, Inc., the majority shareholder in Iowa Telecom. Consumer Advocate states these relationships present additional issues regarding the existence of effective competition in the identified exchanges. Consumer Advocate asks that the Board docket this matter as a formal notice and comment proceeding.

AT&T Communications of the Midwest, Inc., filed a petition to intervene, stating that as a potential purchaser of access services from Iowa Telecom it will be directly affected by the Board's determination in this case.

Pursuant to 199 IAC 5.3(1), the Board will initiate a formal notice and comment proceeding, identified as Docket No. INU-01-1, to determine whether all retail local exchange services offered within the identified exchanges are subject to effective competition and should be deregulated. Iowa Telecom's petition identifies at least one alleged competitor in each of the alleged competitive zones. The petition makes allegations that the criteria for effective competition in 199 IAC 5.6(1) are met, including availability of comparable services from a choice of suppliers, inability of a

single provider to determine or control prices, ease and likelihood of entry, and substitutability of one provider's service for another.

The Board intends to develop a complete evidentiary record concerning the application of the criteria in subrule 5.6(1) to the identified services. Participants in this docket will be permitted to file sworn statements of position and counterstatements, pursuant to 199 IAC 5.4. An oral presentation, at which all participants will be permitted to cross-examine other participants, will be held pursuant to rules 5.3(4) and 5.5. Because this is a notice and comment proceeding, it is unnecessary for interested persons to file petitions to intervene in order to participate; instead, they may express their intent to participate by filing a statement or counterstatement of position. However, all participants must understand that the Board's discovery rules are in full force and effect in this proceeding.

The Board's rules require that upon docketing a petition for deregulation of a telecommunications service or facility, the Board will cause notice of the proceeding to be published in the Iowa Administrative Bulletin and the Board may require specific notice to persons identified as competitors. 199 IAC 5.3(3). The Board will require Iowa Telecom to serve a copy of its petition and this order on all certificated local exchange carriers in Iowa and on all interexchange carriers that purchased any access services in any of the identified exchanges within the past year.

Finally, the Board will grant the request of the Respondents and extend the time frames established in 199 IAC ch. 5 in order to permit full exploration of the issues.

IT IS THEREFORE ORDERED:

1. A formal notice and comment proceeding identified as Docket No. INU-01-1 is initiated to determine whether the telecommunications services offered within the exchanges identified in Iowa Telecom's amended petition are subject to effective competition and should be deregulated pursuant to Iowa Code § 476.1D.
2. The Executive Secretary of the Board is directed to cause notice of the docketing of these proceedings to be published in the Iowa Administrative Bulletin.
3. Within 14 days of the date of this order, Iowa Telecom shall serve a copy of its corrected petition and this order on all certificated local exchange carriers in Iowa and on all interexchange carriers that purchased any access services in any of the identified exchanges within the past year.
4. The following procedural schedule is established:
 - a. Any interested person may file, on or before October 29, 2001, a statement of position concerning deregulation of the listed services. Statements of position must substantially comply with 199 IAC 2.2(2). Ten copies must be filed with the original.
 - b. Any person filing a statement of position may file a counterstatement replying to the comments of other participants no later than

November 19, 2001. Ten copies must be filed with the original and copies must be served upon all participants filing statements to which the counterstatement responds. Counterstatements must substantially comply with 199 IAC 2.2(3).

c. All statements and counterstatements shall be sworn and directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

d. An oral presentation is scheduled for the purpose of taking sworn testimony concerning the statements and counterstatements. The oral presentation shall be held December 11, 2001, beginning at 10 a.m. in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. All persons filing written statements shall have at least one witness available at the oral presentation who may be cross-examined on the subject matter of the written statement. Cross-examination may be by the Board, the Consumer Advocate Division of the Department of Justice, and other participants, as the Board may deem appropriate to develop the record fully. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

5. Pursuant to 199 IAC 5.3(2)"b"(4) and the request of Independent Networks, L.C., Farmers' and Business Men's Telephone Company, Forest City

Telecom, Inc., and Lost Nation-Elwood Telephone Group, the Board finds good cause to extend any and all time deadlines for a sufficient period of time to permit a full investigation of the issues presented by the petition.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Mark O. Lambert

Dated at Des Moines, Iowa, this 17th day of September, 2001.

UTILITIES DIVISION [199]

Notice of Intended Action

The Iowa Utilities Board (Board) hereby gives notice, pursuant to 199 IAC 5.3(3) (2001), that on August 9, 2001, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a petition for determination of effective competition and deregulation pursuant to Iowa Code § 476.1D (2001). Iowa Telecom asks the Board to determine that its existing retail local exchange service in the exchanges of Armstrong, Bennett, Coon Rapids, Delmar, Forest City, Lowden, Manning, Oxford Junction, and Stanwood are subject to effective competition and should be deregulated. If the Board grants that request and deregulates Iowa Telecom's retail local exchange services in the identified exchanges, Iowa Telecom requests a determination by the Board that a deregulation accounting plan is not required of Iowa Telecom because its rates are presently regulated pursuant to a price regulation plan under Iowa Code § 476.97.

In support of its petition, Iowa Telecom states that in each of the exchanges a competitive local exchange carrier (CLEC) has applied for and received a certificate of public convenience and necessity to permit the CLEC to offer competitive telecommunications services in the identified exchange. Iowa Telecom alleges that these CLECs have acquired a substantial percentage of the local exchange service provided in each exchange. (Iowa Telecom included alleged market share data as a part of Exhibit B to its exchange, but Iowa Telecom requested confidential treatment

for that exhibit, so the Board will not use specific numbers from the exhibit in this order.)

On September 10, 2001, responses to Iowa Telecom's petition were filed by several interested persons, raising various issues regarding the petition and requesting formal notice and comment proceedings. Pursuant to 199 IAC 5.3(1), the Board has therefore initiated a formal notice and comment proceeding, identified as Docket No. INU-01-1, to determine whether all retail local exchange services offered within the identified exchanges are subject to effective competition and should be deregulated.

The Board intends to develop a complete evidentiary record concerning the application of the criteria in subrule 5.6(1) to the identified services. Participants in the docket will be permitted to file sworn statements of position by October 29, 2001, and counterstatements by November 19, 2001. An oral presentation, at which all participants will be permitted to cross-examine other participants, will commence on December 11, 2001. Further details may be obtained from the Board's order, available on the Board's Web site at <http://www.state.ia.us/iub>.

September 18, 2001

/s/ Allan T. Thoms
Allan T. Thoms
Chairperson